

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK LEE SMITH,
#2019001232,

Petitioner,

Civil Action No. 19-CV-10240

vs.

HON. BERNARD A. FRIEDMAN

LAURIE MIRLES-SMITH, et al.,

Respondents.

_____ /

**ORDER GRANTING PETITIONER'S MOTION TO REOPEN AND
TRANSFERRING THE MATTER TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner, who is confined at the Muskegon Correctional Facility in Muskegon, Michigan, filed a petition in January 2019 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenged his then pending prosecution in Wayne County Circuit Court. The Court summarily dismissed the petition without prejudice because a habeas petitioner cannot challenge a pending criminal prosecution in the absence of exceptional circumstances, which were not present in this case.

Petitioner pled nolo contendere to four counts of first-degree criminal sexual conduct in Wayne County Circuit Court. In May 2019, he was sentenced to seventeen to thirty-five years in prison. Petitioner filed a habeas petition challenging this conviction, which was denied on the merits. *See Smith v. Burt*, No. 1:19-CV-759, 2020 WL 1910025 (W.D. Mich. Apr. 20, 2020); appeal dismissed, No. 20-1457, 2020 WL 6738108 (6th Cir. Oct. 16, 2020).

Petitioner seeks to reopen his former habeas petition to challenge this conviction again. A person who seeks to file a second or successive habeas petition must first obtain from the

appropriate court of appeals an order authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). When a habeas petitioner files a second or successive habeas petition without preauthorization from the court of appeals, the district court must transfer the petitioner to the court of appeals. *See In re Sims*, 111 F.3d 45, 47 (6th Cir.1997). Accordingly,

IT IS ORDERED that petitioner's request to reopen (ECF No. 4) is granted.

IT IS FURTHER ORDERED that this matter is transferred to the United States Court of Appeals for the Sixth Circuit pursuant to *In re Sims*.

Dated: June 30, 2021
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 30, 2021.

Derrick Smith #2019001232
MUSKEGON CORRECTIONAL FACILITY
2400 S. SHERIDAN
MUSKEGON, MI 49442

s/Johnetta M. Curry-Williams
Case Manager